IBA JAPAN | INTERNATIONAL BANKERS ASSOCIATION OF JAPAN | JFMC Japan Financial Markets Council

March 16, 2022

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Notice of Proposed Rulemaking on the Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition Against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions (File No. S7-32-10)

Dear Ms. Countryman:

I. Introduction

The International Bankers Association of Japan ("IBA Japan")[1] and the Japan Financial Markets Council ("JFMC")[2] are grateful for the opportunity to provide our comments to the Securities and Exchange Commission (the "Commission" or "SEC") on the proposed Rule 10B-1 (the "Proposal") under the Securities Exchange Act of 1934 (the "Exchange Act") requiring the reporting of large security-based swap ("SBS") positions. We believe the views and comments expressed in this letter are a fair representation of the Japanese market participants' point of view. Specifically, the letter focuses on the impact of the Proposal to the overall SBS market in Japan as well as the impact to the SBS trading activity by Japanese market participants[3].

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[1] IBA Japan is an association for foreign banks, securities companies and associate members based in Japan. It carries out a range of services and activities to promote a strong and efficient financial sector and support members' business interests. http://www.ibajapan.org/

[2] The JFMC is an association which includes representatives from five Japan-based institutions and four international firms active in Japanese capital markets. Its aim is to ensure that authorities deciding on regulatory initiatives that have a global impact are aware of and take into account the effect of new regulations on Japanese capital markets. The current JFMC members are MUFG Bank, Ltd., Daiwa Securities Group Inc., Mizuho Securities, Nomura Holdings, SMBC Nikko Securities Inc., BNP Paribas, Citigroup Japan, Morgan Stanley and UBS Securities Japan Co., Ltd. The co-chairs of the JFMC are the representatives from BNP Paribas and Nomura Holdings. The Secretariat of IBA Japan serves as the Secretariat for JFMC.

[3] The term "Japanese market participant" as used in this letter means a Japanese entity that (a) is not registered with the SEC as a security-based swap dealer and (b) predominantly engages in security-based swap trading activity in Japan as an end-user and not as a market-maker or a dealer.

Before articulating our specific concerns with the Proposal, we would like to state that fundamentally we truly support the Commission's goal of enhancing transparency of the SBS market. We believe enhancing transparency of the SBS market will reinforce market integrity and strengthen prudent risk management. Further, we commend the Commission's efforts to strike the balance between enhancing market transparency on the one hand, while protecting sensitive and proprietary information held by market participants.

However, we are concerned with the expansive cross-border reach of the Proposal. While we appreciate the Commission's efforts to limit the cross-border reach, we believe the cross-border application of the Proposal is still excessive. Conceptually, we believe the Proposal goes beyond the Commission's jurisdictional authority under Section 772(b) of the Dodd Frank Act[4] which added Section 30(c) of the Exchange Act.[5] Practically, the Proposal could impose an extensive reporting requirement to Japanese market participants by way of a much broader cross-border reach than the Commission's existing regulations relating to SBSs including Regulation SBSR[6].

We are in support of the comments jointly submitted by the Institute of International Bankers ("IIB"), Securities Industry and Financial Markets Association ("SIFMA") and the International Swaps and Derivatives Association, Inc. ("ISDA") to the Commission and we respectfully request the Commission to adopt the recommendations in their comment letter. In addition to endorsing the recommendations made in the IIB, SIFMA and ISDA joint letter, we would like to highlight a few concerns, specifically from the Japanese market participants' viewpoint.

II. Cross-Border Application of the Proposal

Under the Proposal, the reporting requirements would apply to any SBS position for which (1) any of the transactions that comprise the SBS position would be required to be reported under Rule 908(a) of Regulation SBSR; or (2) the reporting person holds any amount of reference securities underlying the SBS position (or would be deemed to be the beneficial owner of such reference securities, pursuant to Section 13(d) of the Exchange Act and the rules and regulations thereunder) and (i) the issuer of such reference security is a partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the U.S. or having its principal place of business in the U.S.; or (ii) such reference security is part of a class of securities registered under Section 12 or Section 15(d) of

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[4] Dodd-Frank Wall Street Reform and Consumer Protection Act.

[5] Exchange Act section 30(c) provides, among other things, that "[n]o provision of [Title VII] . . . shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States," unless that business is transacted in contravention of rules prescribed to prevent evasion of Title VII of the Dodd-Frank Act.

[6] 17 C.F.R. § 242.

the Exchange Act.

1. Rule 908(a) of Regulation SBSR

The reporting requirement under Rule 908(a) of Regulation SBSR will apply to an SBS for which (a) there is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction; (b) the SBS is accepted for clearing by a clearing agency having its principal place of business in the U.S.; (c) the SBS is executed on a platform having its principal place of business in the U.S.; (d) the SBS is effected by or through a registered broker-dealer (including a registered SBS execution facility); (e) the transaction is connected with a non-U.S. person's SBS dealing activity and is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office or by personnel of an agent of such non-U.S. person located in a U.S. branch or office ("ANE Trade"); or (f) the SBS does not satisfy any of (a) through (e), but there is a direct or indirect counterparty on either or both sides of the transaction that is a registered SBS dealer or a registered major SBS participant. We believe prongs (e) and (f) above are particularly concerning for Japanese market participants, as articulated below.

2. Prong (f): Impact to SBS trades with non-U.S. SBS dealers

The Proposal will impose a reporting requirement on a Japanese market participant with respect to SBSs executed with a non-U.S. SBS dealer registered with the SEC ("non-U.S. SBSD")[7] as the reporting requirement under Rule 908(a) of Regulation SBSR will apply to such SBS transaction.

Under Regulation SBSR, the Japanese market participant will not be required to report the SBS transaction for these SBS transactions for the following reasons. First, the reporting obligation will be assigned to the non-U.S. SBSD side pursuant to Rule 901(a)(2)(ii)(B) of Regulation SBSR. Second, Rule 908(b) of Regulation SBSR limits the application of the reporting obligations to exclude non-U.S. persons, unless the SBS transaction is an ANE Trade. Third, an SBS transaction between two non-U.S. persons, in which one party is, or both parties are, registered as an SBSD, is only subject to regulatory reporting, but not public dissemination, under Regulation SBSR; provided, (a) neither party is guaranteed by a U.S. person, and (b) the SBS is not (i) executed on a platform having its principal place of business in the United States, (ii) effected by or through a registered broker-dealer, or (iii) an ANE Trade.[8]

Conversely, the Proposal would impose a reporting requirement to the Japanese

[7] The term "non-U.S. SBSD" as used in this letter means a non-U.S. entity that is registered with the SEC as a security-based swap dealer.

[8] Rule 908(a)(2) of Regulation SBSR

market participant as stated above. In this respect, the cross-border reach of the Proposal is far more expansive than Regulation SBSD. If the reporting requirement under the Proposal was simple and non-complex, the imposition of the reporting requirement to the Japanese market participants may not have a material impact. However, the reporting requirement under the Proposal is extremely complex and significantly onerous to comply with. This is acutely the case for Japanese market participants as most of them are not currently registered as either an SEC SBSD or a CFTC Swap Dealer. Most Japanese market participants may not have any internal controls or systems to classify OTC derivative transactions under the U.S. swap regulatory framework. For example, most Japanese market participants are not familiar with the definitional classification of OTC derivatives transactions into SBS under the SEC's jurisdiction versus a Swap under the CFTC's jurisdiction. Accordingly, they may not have their IT systems configured to classify which OTC derivatives are SBS versus a Swap. Further, their IT systems may not be configured to aggregate SBS positions and related underlying security positions across the whole corporate group under common control. Therefore, it will be a significantly costly and extremely burdensome undertaking for most Japanese market participants to establish a compliance framework including internal controls and systems necessary to comply with the reporting requirements under the Proposal. Practically, the Japanese market participants may have no other choice than to stop trading SBS transactions with non-U.S. SBSDs. Considering that non-U.S. SBSDs are the most active market makers providing liquidity in the global SBS market, losing the ability to trade SBS transactions with non-U.S. SBSDs is a huge opportunity loss for Japanese market participants. This may result in the loss of hedging opportunities, which could result in having a detrimental effect on the overall market liquidity of the global SBS market.

We believe the reporting requirements under the Proposal should not apply to a SBS executed between a Japanese market participant and a non-U.S. SBSD, because, essentially, this SBS is executed between two non-U.S. persons. We believe this is a rational approach in terms of market transparency to the Commission as well as the public. In terms of transparency to the Commission, under our proposed approach of narrowing the scope of SBS positions required to be reported to reference solely Rule 908(a)(1)(i) and Rule 908(a)(1)(ii), as further stated below, we believe the Commission will be afforded sufficient transparency. In terms of market transparency to the public, we believe the determination of whether the SBS data should be made publicly available is more of a question for the relevant foreign regulator(s) where the two non-U.S. persons are domiciled and primarily regulated. Given that essentially this is an SBS transaction executed between two non-U.S. persons, the public that will predominantly benefit from the public disclosure will be the public of the foreign jurisdiction and not the public of the United States.

Accordingly, we believe the Commission should defer the judgment of whether the SBS data should be made publicly available to the foreign regulator(s), based on the principle of international comity. Moreover, the anti-fraud and anti-manipulation rules would remain applicable to address any concerns associated with misconduct occurring in connection with such SBS trades.

As stated above, the extraterritorial reach of the Commission's jurisdiction over SBS is set forth under Section 772(b) of the Dodd Frank Act, which added Section 30(c) of the Exchange Act. Based on Section 30(c) of the Exchange Act, the Commission has established rules on the cross-border application for several regulations related to SBS including Regulation SBSR. As stated above, under Regulation SBSR, a Japanese market participant will not be obliged to report for SBS transactions executed with non-U.S. SBSDs. In the Proposal, the Commission states that it is appropriate to tie the reporting requirements under the Proposal to the regulatory reporting and public dissemination requirements under Regulation SBSR. We agree with the approach of tying the two reporting requirements and we believe the cross-border reach of the Proposal should also be aligned with that of Regulation SBSR.

3. Prong (e): Challenges with ANE Trades

The Proposal will impose a reporting requirement on a Japanese market participant with respect to SBS transactions executed with a non-U.S. dealer[9], when the SBS is an ANE trade for the non-U.S. dealer.

Under Regulation SBSR, the Japanese market participant will not be required to report the SBS transaction for these SBS transactions for the following reasons. First, the reporting obligation will be assigned to the non-U.S. dealer side pursuant to Rule 901(a)(2)(ii)(E)(3). Second, Rule 908(b) of Regulation SBSR limits the application of the reporting obligations to exclude non-U.S. persons, unless the SBS transaction is an ANE Trade. In this case, the non-U.S. dealer will not necessarily be registered with the SEC as a SBSD, for instance if the dealer's SBS trading volume is below the SBSD registration threshold.

Conversely, the Proposal would impose a reporting requirement on the Japanese market participant when the SBS is an ANE trade for the non-U.S. dealer. Due to the same reasons stated in the above section 2, imposing a reporting requirement under the Proposal on Japanese market participants may result in them losing the ability to trade SBSs with non-U.S. dealers when the SBS is an ANE trade for the

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[9] The term "non-U.S. dealer" as used in this letter means a non-U.S. entity that (a) is not registered with the SEC as a security-based swap dealer but (b) predominantly engages in security-based swap dealing activity as a market-maker or dealer.

non-U.S. dealer. Considering that non-U.S. dealers are active market makers providing liquidity in the non-U.S. SBS market, losing the ability to trade SBSs with such non-U.S. dealers would be a huge opportunity loss for Japanese market participants, which could result in having a detrimental effect on the overall market liquidity of the non-U.S. SBS market.

In addition, imposing a reporting requirement on Japanese market participants for such ANE trades will have the following negative consequences.

First, a Japanese market participant will usually have no visibility on whether its non-U.S. dealer counterparty reported an SBS transaction due to the involvement of its U.S. personnel. In practical terms, a Japanese market participant will need to obtain a representation from its non-U.S. dealer counterparty to confirm the lack of U.S. personnel involvement. The burden of obtaining such representation from every non-U.S. dealer counterparty that has a U.S. presence is significantly cumbersome since many non-U.S. dealers have a U.S. presence typically in the form of a U.S. branch or U.S. subsidiary. If Japanese market participants temporarily lost the ability to trade SBSs with such non-U.S. dealer counterparties until obtaining a representation, such loss of ability may result in the loss of hedging opportunities and have a dampening effect on the market liquidity of the non-U.S. SBS market.

Second, many Japanese market participants will likely refuse to interact with U.S. personnel or stop trading SBSs where there is U.S. personnel involvement to avoid the reporting requirement under the Proposal. This will result in Japanese market participants losing access to the top professionals with market expertise of the U.S. market, which could lead to negative outcomes for SBS referencing U.S. securities.

We believe the reporting requirements under the Proposal should not apply to a Japanese market participant for SBS traded with a non-U.S. dealer when it is an ANE trade for the non-U.S. dealer, because ANE trades do not present direct risk to the United States, as these are trades between two non-U.S. persons under the foreign regulators' jurisdiction with a low U.S. nexus. We believe this is a rational approach in terms of market transparency to the Commission as well as the public. In terms of transparency to the Commission, under our proposed approach of narrowing the scope of SBS positions required to be reported to reference solely Rule 908(a)(1)(i) and Rule 908(a)(1)(ii), as further stated below, we believe the Commission will be afforded sufficient transparency. In terms of market transparency to the public, we believe the determination of whether the SBS data should be made publicly available is more of a question for the relevant foreign regulator(s) where the two non-U.S. persons are domiciled and primarily regulated. Given that essentially this is an SBS transaction executed between two non-U.S. persons, the public that will predominantly benefit from the public disclosure will be the public of the foreign

jurisdiction and not the public of the United States. Accordingly, we believe the Commission should defer the judgment of whether the SBS data should be made publicly available to the foreign regulator(s), based on the principle of international comity. Moreover, the anti-fraud and anti-manipulation rules would remain applicable to address any concerns associated with misconduct occurring in connection with such SBS trades.

As stated above in section 2, we agree with the Commission's approach of tying the reporting requirements under the Proposal to that under Regulation SBSR and we believe the cross-border reach of the Proposal should also be aligned with that of Regulation SBSR.

4. SBS Positions Subject to the Reporting Threshold Amounts

In light of the above impact and challenges, we recommend the Commission to reconsider the approach of using Rule 908(a) of Regulation SBSR to define the scope of SBS positions subject to the reporting requirement. More specifically, the Commission should narrow the scope of SBS positions required to be reported under Rule 908(a) of Regulation SBSR to reference solely Rule 908(a)(1)(i) (for transactions for which there is a direct or indirect counterparty[10] that is a U.S. person on either or both sides of the transaction) and Rule 908(a)(1)(ii) (for transactions accepted for clearing by a clearing agency having its principal place of business in the United States).

Furthermore, we recommend the Commission to reconsider the approach of applying the reporting requirement when the reporting person holds any amount of reference securities underlying the SBS swap position, where (i) the issuer of such reference security is a partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States; or (ii) such reference security is part of a class of securities registered under Section 12 or Section 15(d) of the Exchange Act. More specifically, the Commission should replace the two prongs with a single prong that limits the scope of referenced securities to those securities registered on a U.S. exchange. We believe this approach better captures those instruments with a sufficient U.S. nexus as well as provides clarity to Japanese market participants as to which instruments are within scope of the reporting requirement.

III. Reporting Threshold Amounts

[10] The term "indirect counterparty" as used in this letter means that a U.S. person is providing a guarantee to a non-U.S. person that is the direct counterparty.

Under the Proposal, the reporting threshold amounts differ depending on the type of SBS held by a reporting person as follows:

(1) With respect to SBS positions comprised of CDS, the reporting threshold amount would be the lesser of: (a) a long notional amount of CDS of $150 million (after subtracting long positions in deliverable debt obligations); (b) a short notional amount of CDS of $150 million; or (c) a gross notional amount of CDS of $300 million;
(2) With respect to non-CDS SBS positions based on debt securities, the reporting threshold amount would be a gross notional amount of such SBS positions of $300 million; or
(3) With respect to SBS positions based on equity securities, the reporting threshold amount would be the lesser of: (a) a gross notional amount of $300 million of equity SBSs (or a combined $300 million consisting of at least $150 million of equity SBSs plus the value of underlying securities and delta-adjusted option, future and other derivative positions) or (b) an SBS position that represents more than 5% of a class of equity securities (or ownership of a combined 5% interest of a class of securities based on at least a 2.5% SBS equivalent position plus ownership of underlying equity securities and shares attributable to options, futures or other derivatives).

We believe the proposed reporting threshold amounts are too low, in particular for SBS positions based on equity securities, and may result in the reporting of immaterial positions at the detriment of compromising the confidentiality of trading strategies and position information of the reporting persons. Due to the low threshold amounts, Japanese market participants could also face hedging difficulties.

This said, we do recognize the challenges in establishing the appropriate reporting threshold amounts, in light of the absence of comprehensive and reliable data. To strike the right balance between the strengthening the integrity of the SBS market by enhancing transparency and protecting confidential trading information, we believe the Commission should better tailor the reporting threshold amounts by: (1) calibrating the thresholds for CDS and non-CDS debt SBSs using data collected under Regulation SBSR and (2) eliminating the notional-based threshold for equity SBS positions.

Also, a market participant should only trigger reporting if it has a directional position that exceeds a threshold on a net basis, after excluding certain hedging positions.

IV. Schedule 10B: Item 8

The Proposal would require reporting by any person that exceeds the applicable reporting threshold amount of SBS positions and related information by filing a Schedule 10B using the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") database system.[11] Schedule 10B would include certain information about the reporting person as well as details about the SBS positions. As stated above, we commend the Commission's efforts to strike the balance between enhancing transparency on the one hand, while protecting sensitive and proprietary information held by market participants such as counterparty information.

However, we are concerned with the vague and potentially broad scope of instruments that could be captured under Item 8 of Schedule 10B, which will require the disclosure of "*[o]wnership of any other instrument relating to the Security-Based Swap Position and/or any underlying security or loan or group or index of securities or loans, or any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of a security-based swap included in the Security-Based Swap Position, if not otherwise disclosed pursuant to Items 6 or 7 of [the Schedule 10B].*" [12]

The term "*relating to*" is unclear in terms of the universe of positions that would need to be captured and reported. We believe the ambiguity will result in a significant increase in the cost and complexity of the reporting. To provide an example, it is unclear whether American depository receipts ("ADR") would fall within scope of Item 8 of Schedule 10B with respect to a SBS position where the underlying security is the share being represented by the ADR (*i.e.*, not the ADR itself). We believe the ADR should not fall within scope of Item 8 in this case as the ADR is not the underlying security of the SBS position, however this is not entirely clear. As many Japanese market participants have issued ADRs in the U.S. market, this kind of ambiguity could result in a significant amount of confusion for Japanese market participants with regard to the treatment of ADR positions. In light of the tight one-day timeframe for the reporting, as a practical matter, a reporting person will need to automate the operational flow to gather the data of SBS positions and related underlying security positions across the corporate group under common control. The level of ambiguity under Item 8 of Schedule 10B is clearly untenable from this viewpoint. We believe the Commission should remove Item 8 from Schedule 10B.

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[11] Proposal, Rule 10B-1(a)(1).
[12] Proposal, Schedule 10B, Item 8.

V. Scope of Application: Common Control

The Proposal would require reporting by any person (and any entity controlling, controlled by, or under common control with such person), or group of persons, who through any contract, arrangement, understanding, or relationship, after acquiring or selling, directly or indirectly, any SBS is directly or indirectly the owner or seller of an SBS position that exceeds an applicable reporting threshold amount. In essence, the Proposal requires the aggregation of SBS positions across corporate group entities under common control for the purpose of calculating the reporting threshold amounts as well as reporting under Schedule 10B.[13]

However, we are concerned with a simple approach of applying the requirement to all entities under common control in a corporate group, without due regard to the fact that entities within a corporate group typically operate independently from each other with respect to SBS trading and SBS position information is generally perceived to be sensitive information that is not shared across different entities under common control within a corporate group. In Japan, there is a firewall regulation that prohibits securities firms from sharing certain client information with certain other entities within a corporate group unless certain conditions are met. The firewall regulation may erect certain impediments that will preclude the sharing of information across different entities within a group of financial institutions under common control.

We believe the scope of position that should be aggregated across multiple entities under common control should not be required when (a) the trading activity in SBS positions is being conducted independently across different entities and the different entities have no involvement or visibility of the SBS positions of each other or (b) the sharing of SBS position information is prohibited under applicable laws or regulations, e.g., the Japanese firewall regulations.

In addition, we further believe that SBSs entered into by a person with an entity controlling, controlled by, or under common control with that person should be excluded from the reporting threshold amount. These inter-affiliate SBS positions are usually entered into for group-wide risk management purposes. Accordingly, requiring such positions to be counted toward the reporting threshold amount would result in double-counting SBS positions, thus triggering Rule 10B-1 reporting at relatively low levels of outright market exposure.

Based on the above considerations, we request a proviso to be added to paragraph (a)(1) of § 240.10B-1 of the Proposal as underscored below.

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[13] Proposal, 10B-1(a)(1)

"(1) Any person (and any entity controlling, controlled by or under common control with such person), or group of persons, who through any contract, arrangement, understanding or relationship, after acquiring or selling directly or indirectly, any security-based swap, is directly or indirectly the owner or seller of a security-based swap position that exceeds the reporting threshold amount, shall file with the Commission a statement containing the information required by § 240.10B-101 (Schedule 10B) on the Commission's Electronic Data Gathering, Analysis and Retrieval System (EDGAR); *provided*, entities or business units that operate independently of each other (including cases where information barriers exist between the entities or business units) with respect to SBS trading activity should not be viewed as being "controlling, controlled by or under common control" or a "group of persons" for the purpose of this paragraph (a)(1)."

VI. Reporting Deadline

Under the Proposal, the reporting person would be required to file a Schedule 10B promptly, but in no event later than the end of the first business day following (a) the day of execution of the SBS transaction that results in the SBS position's first exceeding the reporting threshold amount or (b) the occurrence of a material change to the facts set forth in a previously filed Schedule 10B.

We agree with the Commission's goal of making position data available to the public on a timely basis. However, we respectfully disagree with aligning the timing of Schedule 10B to that of the trade acknowledgment requirement under 17 CFR 240.15Fi-2(b).[14] The level of complexity involved in filing a Schedule 10B is significantly greater than that involved in complying with the trade acknowledgment requirement.

As the level of complexity involved in filing a Schedule 10B is comparable to that of the requirement under Section 13 of the Exchange Act, the reporting deadline of the Schedule 10B report should be aligned with the disclosure requirement under Section 13 of the Exchange Act, which provides (a) 10 days to file a Schedule 13D from the acquisition of beneficial ownership exceeding 5% of any class of equity security[15] or (b) 45 days after the end the calendar year (or within 10 days after the end of the month if the person's beneficial ownership exceeds 10% of the class of equity securities) to file a Schedule 13G for certain persons including registered dealers, banks and registered investment companies, *provided* that, among other requirements, such person acquires the securities in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the

[14] 17 C.F.R. 240.15Fi-2(b) requires SBSDs or major SBS participants to provide a trade acknowledgment within one business day of a SBS transaction.
[15] 17 C.F.R. § 240.13d-1(a).

issuer.[16] Further, Section 13(f) of the Exchange Act and Rule 13f-1 thereunder provides that an institutional investment manager which exercises investment discretion with respect to accounts holding Section 13(f) securities, as defined in rule 13f-1(c), having an aggregate fair market value on the last trading day of any month of any calendar year of at least $100 million, shall file a report on Form 13F with the Commission within 45 days after the last day of such calendar year and within 45 days after the last day of each of the first three calendar quarters of the subsequent calendar year. Similar to how the requirements under Section 13 of the Exchange Act adjust the reporting timing and frequency based on the reporting person's role in the market, the Proposal should adjust the reporting timing and frequency of Schedule 10B based on analogous standards.

VII. Transition Period

As stated throughout this letter, given the level of complexity that would be involved in establishing a compliance framework to comply with the reporting requirements under the Proposal, many market participants, particularly those who are not registered with the SEC or a U.S. person, will be required to devote a significant amount of resources and incur extensive costs to set up appropriate systems and controls. This is acutely the case for Japanese market participants. In light of the challenges associated with implementing the compliance framework, a compliance period of at least 24 months is warranted and necessary.

We also recommend that the Commission delay the public disclosure of information reported under Proposed Rule 10B-1 until the appropriate period of months after regulatory reporting is required.

VIII. Conclusion

Thank you for the opportunity to share our views on the Proposal. We strongly support the Commission's goal of enhancing the transparency of the SBS market. We are committed to working collaboratively with the Commission to establish a rule that is better calibrated to enhance market transparency, while limiting the excessive cross-border reach and avoiding any unintended consequences to the Japanese market participants in the SBS market. We are available to discuss these comments in further detail with you if required.

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[16] 17 C.F.R. § 240.13d-1(b).

Yours faithfully,

Toshiyasu Iiyama
Co-Chairman of the JFMC

Date: March 16. 2022

Philippe Avril
Co-Chairman of the JFMC
Chairman of the IBA Japan

Date: Mar. 16. 2022